



DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2021-0037]

Surface Transportation Project Delivery Program; California High-Speed Rail

Authority Audit Report

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice; Request for comment.

SUMMARY: The Surface Transportation Project Delivery Program (STPD Program), often referred to as the “NEPA Assignment Program,” allows a State to assume FRA’s responsibilities for Federal environmental review, consultation, and compliance under the National Environmental Policy Act (NEPA), and other Federal environmental laws, for railroad projects. When a State assumes these responsibilities, it carries out the assigned environmental review process, in lieu of FRA. The STPD Program requires annual audits for the first four years of the State’s lead role in the program to ensure compliance with program requirements. This notice requests comments on FRA’s first audit report of the California High-Speed Rail Authority (CHSRA) under the STPD Program.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Comments related to Docket No. FRA-2021-0037 may be submitted by going to <http://www.regulations.gov> and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number (docket #). All comments received will be posted without change to <https://www.regulations.gov>; this includes any personal information. Please see the Privacy Act heading in the SUPPLEMENTARY INFORMATION section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> and follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Andréa Martin, Senior Environmental Protection Specialist, Office of Railroad Policy and Development (RPD), telephone: (202) 493-6201, email: Andrea.Martin@dot.gov; or Marlys Osterhues, Chief Environment and Project Engineering, RPD, telephone: (202) 493-0413, email: Marlys.Osterhues@dot.gov.

SUPPLEMENTARY INFORMATION:

Privacy Act Statement: FRA will post comments it receives without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, inclusion of names is completely optional. Whether commenters identify themselves or not, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Draft Surface Transportation Project Delivery Program Audit of the California High-Speed Rail Authority: December 8-10, 2020

Executive Summary

This report summarizes the results of FRA's first audit of CHSRA's conduct of its environmental review responsibilities under 23 U.S.C. 327, in accordance with the July 23, 2019, memorandum of understanding (section 327 MOU) between CHSRA and FRA.

To carry out its audit responsibilities under the section 327 MOU, FRA formed a team (Audit Team) in April 2020. The Audit Team consisted of NEPA subject matter experts (SMEs) from FRA's environmental and project management divisions and the John A. Volpe National Transportation Systems Center. In addition, FRA designated a Senior Environmental Protection Specialist to serve as a NEPA Assignment Program liaison to CHSRA. The Audit Team reviewed certain NEPA project documentation completed by CHSRA during the first year of the NEPA Assignment Program, and CHSRA's self-assessment of its NEPA Assignment Program. In addition, the Audit Team reviewed documents related to quality assurance and quality control (QA/QC) and conducted interviews with relevant CHSRA staff between December 8 and 10, 2020.

Overall, the Audit Team found that CHSRA is carrying out the responsibilities it has assumed and complies with the provisions of the section 327 MOU.

Background

The STPD Program allows a State to assume FRA's environmental responsibilities for review, consultation, and compliance for railroad projects. When a State assumes these Federal responsibilities, the State becomes solely liable for carrying out the responsibilities it has assumed, in lieu of FRA. CHSRA published its application under the STPD Program on November 9, 2017, and made it available for public comment for 30 days. After considering public comments, CHSRA submitted its application to FRA on January 31, 2018. The application served as the basis for developing the section 327 MOU identifying the responsibilities and obligations that CHSRA would assume.

FRA published a notice of the draft MOU in the *Federal Register* on May 2, 2018, with a 30-day comment period to solicit the views of the public and Federal agencies. After the close of the comment period, FRA considered comments received and proceeded to execute the MOU with CHSRA. On July 23, 2019, CHSRA assumed FRA's responsibilities under NEPA, and the responsibilities for NEPA-related Federal environmental laws described in the section 327 MOU.

Section 327(g) requires the Secretary of Transportation (Secretary) to conduct annual audits during each of the first four years of State participation. After the fourth year, the Secretary must monitor the State's compliance with section 327 MOU, but no longer conducts audits. The results of each audit must be made available for public comment.

FRA's annual audits are the primary mechanism to (1) oversee the State's compliance with this MOU and applicable Federal laws and policies; (2) determine the State's attainment of the performance measures identified in part 10 of the section 327 MOU; and (3) collect information needed for the Secretary's annual report to Congress pursuant to 23 U.S.C. 327(i). FRA will conduct three more annual audits consistent with 23 U.S.C. 327(g) and part 11 of the section 327 MOU. FRA must present the results of each audit in a report and make the report available for public comment in the *Federal Register*, before finalizing.

Scope and Methodology

Consistent with the section 327 MOU, the Audit Team examined a sample of CHSRA's NEPA project files; CHSRA's self-assessment report; and CHSRA policies, guidance, and manuals relating to NEPA responsibilities. The scope of the project file portion of the audit included a review of six reexaminations for previously approved Final Environmental Impact Statements (EIS) and one Final EIS/Record of Decision (ROD), representing all projects in process or initiated after the section 327 MOU's

effective date through June 30, 2020. In conducting the audit, and to determine compliance with the section 327 MOU, the FRA Audit Team focused on objectives related to six NEPA Assignment Program Elements: program management, documentation and records management, QA/QC, training, performance measurement, and legal sufficiency. Each NEPA Assignment Program Element is described further below.

The Audit Team interviewed 11 CHSRA staff, in one of CHSRA's three regional offices, and at its headquarters office. In addition, the Audit Team interviewed one staff member from the U.S. Environmental Protection Agency. The Audit Team invited CHSRA staff, middle management, counsel, and executive management to participate in the interview process to ensure representation of a diverse range of staff expertise, experience, and program responsibility.

To evaluate CHSRA's performance against its documented procedures, the Audit Team compared the procedures outlined in CHSRA's environmental manuals and policies to the information obtained during staff interviews and project file reviews. The Audit Team documented observations under the six NEPA Assignment Program Elements.

Audit Results

Overall, CHSRA has carried out the environmental responsibilities assumed through the section 327 MOU and the Audit Team found that CHSRA is complying with the section 327 MOU.

Program Management

Consistent with part 4 of the section 327 MOU, CHSRA has developed and implemented the updated Environmental Policies and Procedures Handbook, Environmental Compliance Program Manual, a QA/QC Plan, and the NEPA Assignment Training Course. CHSRA has also conducted the required self-assessment.

CHSRA has incorporated the NEPA Assignment Program into its overall project development process included in CHSRA's environmental manuals and policies.

CHSRA has also created a NEPA assignment team in the CHSRA headquarters office to support the new responsibilities under the NEPA Assignment Program. To ensure NEPA Assignment responsibilities are fulfilled, CHSRA staff at the headquarters office review projects for compliance with assigned environmental laws and regulations independently from staff responsible for developing the NEPA and related documentation, as required in part 3 of the section 327 MOU.

CHSRA environmental staff at the three regional offices coordinate their NEPA related project-work with headquarters staff through NEPA Coordinators. Prior to assuming responsibilities under the NEPA Assignment Program, CHSRA regional staff reported to their regional office. However, following its assumption of FRA's NEPA responsibilities, CHSRA hired a NEPA Assignment Manager in the headquarters office who is responsible for overseeing CHSRA's policies, manuals, guidance, and training under the NEPA Assignment Program. CHSRA also has assigned a team of attorneys to advise on the environmental review process. The legal team includes both CHSRA in-house counsel and outside counsel, who advise on issues relate to the assigned responsibilities.

Since the NEPA Assignment Program became effective, CHSRA staff noted that their relationship with resource agencies has not changed, and the overall environmental and consultation process has continued without significant change. FRA's Audit Team's review of project files supports this conclusion.

Documentation and Records Management

Between July 23, 2019, and June 30, 2020, CHSRA made 22 NEPA auditable actions. Employing judgmental sampling, the Audit Team reviewed seven NEPA project files; six were reexaminations of previously approved Final EISs and one was a

combined Final EIS/ROD. These projects represented a sampling of CHSRA environmental review efforts in process, or initiated after, the section 327 MOU's effective date through June 30, 2020, covering a range of resource considerations and agency coordination requirements. The Audit Team found that CHSRA maintained a complete final electronic record, including all NEPA-related documentation.

The Audit Team recognized several CHSRA efforts to ensure consistency of project documentation through CHSRA's use of an accessible file database. Interviews with CHSRA staff indicated that the regional staff consistently manage project files, including working files. In addition, CHSRA uses a software program to document public and resource agency comments, allowing CHSRA to track comments, responses, and resolution.

Quality Assurance/Quality Control

Under part 10.2.B of the section 327 MOU, CHSRA has agreed to carry out regular QA/QC activities to ensure the assumed responsibilities are conducted in accordance with applicable law and the section 327 MOU. The Audit Team noted that CHSRA has implemented a QA/QC program where environmental staff in the three regions coordinate with the NEPA assignment team within the headquarters office. The NEPA assignment team is responsible for reviewing all NEPA documentation and technical reports to ensure compliance. CHSRA staff also have access to SMEs for various environmental resources and regulations. During interviews, CHSRA staff noted that the NEPA assignment team acts independently to provide unbiased and objective reviews of work products. The Audit Team also found that regional staff understands how to implement the QA/QC process throughout the environmental review process.

During subsequent audits, the FRA Audit Team will require that CHSRA provide FRA with supporting QA/QC documentation associated with project files. This will allow the Audit Team to confirm QA/QC measures are being fully implemented for the projects

under review. The Audit Team also recommends that CHSRA review a judgmental or random sampling of projects between FRA's annual audits to check compliance and identify potential improvements that can be made to the QA/QC process.

Training Program

CHSRA committed to implementing training necessary to meet its environmental obligations under the section 327 MOU. CHSRA developed its NEPA Assignment Training Plan to fulfill the requirements of part 12 of the section 327 MOU. The training covers all topics related to CHSRA's responsibilities under NEPA assignment. Based on interviews and a review of training documentation and records, all CHSRA staff received the training in accordance with the training plan after the MOU was executed.

The FRA Audit Team recommends that CHSRA expand its training plan to include additional training opportunities. This training could include formal or informal training with State and Federal resource agencies, in addition to the regularly scheduled agency coordination meetings.

Performance Measures

In accordance with part 10.1.1 of the section 327 MOU, FRA and CHSRA have established performance measures that CHSRA will seek to attain and that FRA will consider during FRA's audits.

CHSRA is still in the early stages of developing metrics to track attainment of performance measures outlined in the section 327 MOU. However, based on the results of the audit review and interviews, the FRA Audit Team found that CHSRA is implementing the performances measures. CHSRA environmental leadership staff indicated they will continue to implement the performance measures in part 10 of the section 327 MOU.

Legal Sufficiency

CHSRA conducts a legal sufficiency review at various stages of the environmental review process, consistent with existing internal procedures. This review is generally conducted by outside counsel and CHSRA attorneys. CHSRA attorneys are responsible for making the final written determination regarding legal sufficiency of EISs prior to their publication.

Next Steps

FRA provided this draft audit report to CHSRA for a 21-day review and comment period. The FRA Audit Team considered CHSRA comments in developing this draft audit report. This draft audit report is available for public review for a 30-day comment period in accordance with 23 U.S.C. 327(g). No later than 60 days after the close of the comment period, FRA will respond to all comments submitted to finalize this draft audit report pursuant to 23 U.S.C. 327(g)(B). FRA will publish the final audit report in the *Federal Register*.

Issued in Washington, D.C. on April 16, 2021.

Jamie P. Rennert,
Director, Office of Infrastructure Investment.

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